

**REMARKS**

Claims 1-20 are currently pending in the application and have not been amended as a result of the present Amendment.

Specification paragraphs 40 and 41 have been amended to clearly point out an interior side 28a of a wall plate 28 of the building and to correct minor reference numeral oversights from the originally filed application. Support for the amendments to specification paragraphs 40 and 41 can be found in Figs. 2 and 3 and throughout the specification and original Figs. 2 and 3.

The drawings have been amended to replace Fig.1 with new replacement Fig. 1. New replacement Fig. 1 shows a flange 156 of a tail portion 150 of a vent baffle 100 mounted to an interior side 28a of a wall plate 28 of a building structure 10. Support for this amendment can be found in specification paragraph numbers 32, 33, 40, 41 and 43 and original Figs. 2 and 3.

Based upon the above, no new matter has been added to the application as a result of the amendments to specification paragraphs 40 and 41 and by the addition of replacement Fig. 1.

The above-described amendments were made as a result of a telephone interview with Examiner Derek Boles, who is in charge of prosecution of the above-identified application. The interview was conducted on January 5, 2006 between the Undersigned, Examiner Boles and Applicants Matt Kortuem and Richard L. Partlow, Jr. As a result of the telephone interview, the Examiner agreed that the currently pending independent claims (claims 1, 3, 5 and 17) are patentable over the Examiner's currently pending rejection of these claims in the October Office Action. The Examiner requested that Applicants amend the figures and specification to point out the fixed attachment of the flange 156 of the tail portion 150 to the interior side 28a of the wall plate 28. Below is a summary of the arguments presented to the Examiner, which resulted in the Examiner agreeing that currently pending claims 1, 3, 5 and 17 overcome the rejection of the October Office Action. The Undersigned and the Applicants would like to thank the Examiner for the courtesies extended during the interview.

### **DRAWINGS**

The Examiner requested during the interview that the fixed attachment of the flange 156 to the interior side 28a of the wall plate 28 be more clearly depicted in Fig. 1. Applicants respectfully submit replacement Fig. 1, which shows the flange 156 fixedly attached to the interior side 28a of the wall plate 28. In addition, reference numeral 156 has been added to identify the flange 156. Support for these amendments to Fig. 1 can be found in specification paragraphs 32, 33, 40, 41 and 43 and original Figs. 2 and 3. Applicants respectfully submit that the drawings are in full compliance with U.S. Patent and Trademark Office procedures and respectfully request that the Examiner approve replacement Fig. 1.

### **SPECIFICATION**

Applicants have amended the specification by replacing paragraphs 40 and 41 with amended paragraphs 40 and 41. Specifically, specification paragraph 40 was amended to insert reference numeral 28a to identify the interior side of the wall plate and the reference numeral following the phrase, "wall plate" in line 3 of paragraph 40 was changed from 28a to 28 to identify the wall plate 28.

In addition, specification paragraph 41 was amended to insert reference numeral 28a after recitation of the phrase, "interior side" and the phrase, "wall plate" was identified by reference numeral 28. Several additional reference numerals were added to paragraph 41 to identify additional aspects of the vent baffle, which were inadvertently not included in original paragraph 41.

Applicants respectfully submit that the above-described amendments to the specification do not add new matter and replacement paragraphs 40 and 41 are in full compliance with U.S. Patent and Trademark Office procedures. Accordingly, Applicants respectfully request that the Examiner approve replacement paragraphs 40 and 41 and that the replacement paragraphs be included in the specification of any patent issuing based upon this application.

**CLAIMS**

**CLAIM REJECTIONS – 35 U.S.C. § 103**

The Examiner rejected claims 1, 3-8, 10, 13, 14 and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,660,463 (Bottomore) in view of U.S. Patent No. 6,357,185 B1 (Obermeyer). The Examiner argues that Bottomore discloses each and every element of the above-identified claims except for a flange adapted to be fixedly attached to an interior side of a wall plate. The Examiner further argues that Obermeyer discloses the presence of a flange being adapted to be fixedly attached to an interior side of a wall plate and it would be obvious for one having ordinary skill in the art to modify the system of Bottomore to include the flange being adapted to be fixedly attached to an interior side of a wall plate of Obermeyer for the purpose of a more secure attachment. Applicants respectfully traverse this rejection.

Referring to Figs. 1-5, Bottomore discloses a roof space ventilator 4 including a generally rigid ventilator portion or ventilation means 1, a generally rigid support means 2 and a flexible member 3. The ventilator portion 4 includes a plurality of longitudinal ribs 5 and a plurality of strengthening ribs 7 that are smaller than the longitudinal ribs 5. The support means 2 includes stiffening ribs and is pivotably mounted to the ventilator portion 1 by a manufacturing hinge 8. The flexible member 3 is pivotable with respect to the support means 2 and includes a plurality of transverse corrugations 3a.

In use, the rigid ventilator portion 1 is fixed to the rigid support means 2, the ventilator 4 is installed on a bottom of the roof proximate a tilting piece 15 and the flexible member 3 is located proximate a wall plate 17 and a roof floor 13 (ceiling of the rooms below). The ventilator 4 permits air to enter a roof space 30 through a soffit area 20 and prevents insulating material 18 from escaping through the soffit area 20. Referring to Figs. 6 and 7, the flexible member 3 permits adjustment of the installation angle between the ventilation portion 4 and the support 2 because the flexible member 3 is able to bend at the corrugations 3a such that its end lies flat on the roof floor 13 regardless of the roof angle. The flexible member 3 is not secured to, or adapted to be secured to, the wall plate 17 or to the roof floor 13, but is held in place by the insulation 18 in an assembled configuration. During installation, if the roof space ventilator 4 is installed prior to the building wall drywall and the roof floor 13, the flexible member 3 with its transverse corrugations 3a must be manually held out of the way of the installation of the drywall

and roof floor 13 during their installation, which is inconvenient for an installer. Conversely, if the roof space ventilator 4 is installed after the building wall drywall and the roof floor 13, the amount of space that an installer has to work in the soffit area is severely limited and installation is difficult. The flexible member 3 with the transverse corrugations 3a is not fixed to the roof floor 13, the building wall drywall or the wall plate 17 in either of these installations methods, nor is it adapted to be so fixed, such that the roof space ventilator 4 is able to adapt to various roof pitches through the flexibility of the flexible member 3.

Referring to Figs. 1-7, Obermeyer is directed to a two-part roof ventilator including a rafter air infiltration block 10 and a separate vent chute 40 that is utilized with the air infiltration block 10 to ventilate an attic space. The air infiltration block 10 is comprised of a generally planar sheet including longitudinal fold lines 58, 60 separating a main body of the block 10 into three portions and lateral, side fold lines 68, 70 that separate tabs 52, 54, 56 from the main body of the block 10. The block 10 also includes upstanding tabs 78, 84, 86 that extend from ends of the main body. In use, the air infiltration block 10 is inserted between a top plate 16 and roof of a building proximate a soffit area and between roof rafters 20. The separate tabs 52, 54, 56 are fixed to the rafters 20 such that a lower portion of the main body is positioned on top of the top plate 16 and the remainder of the main body extends generally vertically from the top plate 16 to the roof. The upstanding tabs 78, 84, 86 are then fixedly mounted to the roof or the inner side wall of the top plate 16, respectively. An upper portion of the main body includes two channels 72, 74 that mate with channels 42, 44 defined by the vent chute 40 when it is mounted to an underside of the roof. The infiltration block 10 is sized such that the lower portion of the main body has a width that is generally the same as a width of the top plate 16 and the two additional portions of the main body have a combined width that is the same as a vertical distance between a top of the top plate 16 and the inside of the roof (See Figs. 2 and 3).

Referring to Figs. 1-5, the present application is directed to a single-piece vent baffle 100 including a main body portion 120 and a tail portion 150. The main body portion 120 and tail portion 150 are pivotally secured to each other at a flexible hinge 154. The tail portion 150 includes a flange 156 that is connected to the tail portion 150 by a preformed bend 158. In an installed configuration, the flange 156 is adapted to be fixedly attached to an interior side 28a of a wall plate 28 of a building structure 10. Fixing the flange 156 to the interior side 28a of the wall plate 28 generally prevents significant movement of the tail portion 150 and a flexible and

arching portion of the main body portion 120 following installation. In addition, in the installed configuration, spacers 122 on the main body portion 120 are fixedly attached to an underside of the roof deck 54 of the building structure 10. Accordingly, air is able to flow from an interior space 62 of the building, beyond the spacers 122 and into an attic space 40 of the building structure 10. Fixing both the main body portion 120 and the tail portion 150 of the single-piece vent baffle 100 to the building structure 10 permits the vent baffle 100 to contain insulation 80 within the attic space 40 and generally prevents a strong wind or external forces from the interior space 62 or outside the building structure 10 from moving the vent baffle 100 into the attic space 40 and potentially displacing the insulation 80. Further, fixing the tail portion 150 to the interior side 28a of the wall plate 28 prevents internal forces or the insulation 80 from pushing the vent baffle 100 into the interior space 62 and potentially out of the building structure 10.

Claims 1, 3 and 5 are directed to a single-piece vent baffle attachable to an underside of a roof and to a wall plate of a building structure and include the following features:

- 1) a main body portion,
- 2) a tail portion connected to the main body portion and
- 3) the main body portion is adapted to be fixedly attached to the underside of the roof.

Claim 1 also includes the following features:

- 4) the tail portion has a flange that is connected to a remainder of the tail portion by a preformed bend and
- 5) the flange is adapted to be fixedly attached to an interior side of the wall plate.

Amended claims 3 and 5 also include the following feature:

- 4) a portion of the tail portion is adapted to be fixedly attached to an interior side of the wall plate.

The Examiner has the burden of establishing a *prima facie* case of obviousness when making a rejection under 35 U.S.C. § 103. The Examiner may satisfy this burden only by showing 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one having ordinary skill in the art, to modify or combine the references, 2) a reasonable expectation of success and 3) the prior art references must teach or suggest all of the claim limitations (MPEP 706.02(j)). The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art and

not from the Applicant's disclosure (MPEP 706.02(j)). Further, the mere fact that the prior art could be modified in the manner proposed by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification. Ex parte Dussaud, 7 U.S.P.Q.2d 1818, 1820 (PTO Bd. App. & Int. 1998).

Applicants respectfully submit that one having ordinary skill in the art would not modify the ventilator of Bottomore to include the upstanding tab of Obermeyer that is stapled to an inside surface of the wall plate of the building. Specifically, the flexible member 3 of Bottomore is designed to flex such that the angle between the rigid support 2 and base ventilator 1 may be varied to conform to roofs having different pitches (Figs. 5-7). The flexible member of Bottomore may arc over the inside area of the wall plate before coming to rest on the attic floor beyond the inside edge of the wall plate (Fig. 5), depending upon the pitch of the roof and this would make attachment of a tab to the inside surface of the wall plate difficult or impossible. Adding tabs would change the construction of Bottomore's transversely corrugated flexible member and would complicate its construction needlessly. In addition, the nature of the construction of the flexible member of Bottomore with the transverse corrugations would defeat the Examiner's purpose of more secure attachment of the ventilator to the building, because the corrugations and flexibility of the member would continue to result in flexing of the combined sheet, even if the flexible member were fixed to the inside surface of the wall plate or anywhere on the wall plate.

One having ordinary skill in the art would also not modify the ventilator of Bottomore for the purpose of more secure attachment because the Bottomore device is already securely attached to the building and further securing only complicates the installation and construction of the Bottomore ventilator. The rigid ventilator portion 1 and rigid support means 2 of Bottomore are fixed to each other, are generally rigid in the installed configuration and are fixed to an underside of the roof. The combined rigid ventilator portion and the rigid support means of Bottomore do not require additional stability and the flexible corrugated tail portion of Bottomore is specifically flexible to provide adaptability to various roof pitches. The inclusion of tabs to mount the flexible member to the inside surface of the wall plate would only complicate construction of the Bottomore device and increase complication of installation of the device without providing any noticeable advantages and one having ordinary skill in the art would not so modify Bottomore.

Further, one having ordinary skill in the art would not modify Bottomore to include tabs to mount to an inside surface of the wall plate of the building because the device of Bottomore is designed to be adaptable to buildings having various roof pitches. Accordingly, the flexible member of Bottomore will often be positioned in various states of flexure depending upon the roof pitch and an end of the flexible member will vary in its location relative to an inside edge of the wall plate in the installed configuration. That is, if the flexible member were modified to include tabs at its ends, which were designed to mount to an inside surface of the wall plate, the flexible member would have to have different lengths depending upon the pitch of the roof into which the ventilator is installed. Accordingly, different sized flexible members would be cut for different sized roof pitches and the adaptability of the ventilator of Bottomore for all sized roof pitches would be compromised.

Based upon each of the above-listed arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 1, 3 and 5 based upon obviousness over a combination of Bottomore in view of Obermeyer.

Claims 4, 6-8, 10, 13, and 14 are dependent upon claim 3 or claim 5. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 4, 6-8, 10, 13 and 14 based upon unpatentability over Bottomore in view of Obermeyer, because of their dependence upon claims 3 or 5 for the above-outlined reasons.

Claim 17 of the present application is directed to a method of installing a vent baffle to an underside of a roof and to a wall plate of a building structure and recites, *inter alia*, as follows:

- (a) providing a vent baffle including: a single-piece, unitary body, having: a main body portion; a tail portion connected to the main body portion having a flange disposed at the second end, the flange being connected to a remainder of the tail portion by a preformed bend; and a single flexible hinge connecting the main body portion and the tail portion;
- (b) positioning the vent baffle such that: a portion of the tail portion is adjacent the wall plate; and
- (c) securing the flange to an interior side of the wall plate and the main body portion to the underside of the roof.

Applicants respectfully submit that one having ordinary skill in the art would not perform the method of claim 17 based upon the disclosed method of Bottomore in view of Obermeyer. Similar to the above-described arguments directed to claims 1, 3 and 5, Applicants respectfully submit that one having ordinary skill in the art would not modify Bottomore such that the flange

of the tail portion is secured to an interior side of the wall plate of the building. Bottomore discloses the corrugated member that rests on the attic floor and may potentially lie on the top of the wall plate; however, the corrugated member does not touch an interior wall of the side plate at any time. In addition, one having ordinary skill in the art would not modify the corrugated member of Bottomore such that it is secured to the interior side of the wall plate because such a construction of the corrugated member would unduly complicate the installation and construction of Bottomore, as was described above. Specifically, if the corrugated member were secured to the interior side of the wall plate, the subsequent drywall would not rest on the interior side of the wall plate for proper installation, because the corrugations would provide an obstruction where the drywall should be installed.

Based upon the above-outlined arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 17 based upon unpatentability over a combination of Bottomore in view of Obermeyer.

The Examiner rejected claims 2, 9, 11, 12 and 18-20 under 35 U.S.C. § 103 as being unpatentable over Bottomore in view of Obermeyer. The Examiner argues that Bottomore discloses each and every element of currently pending claims 2, 9, 11, 12 and 18-20 except for the preformed bend forming an angle of about 70-110 degrees between the flange and the remainder of the tail portion, the sheet having a thickness of about 0.010 inch to about 0.040 inch, the synthetic polymeric material being polyvinylchloride, the inclusion of a score line to facilitate cutting and a radiused portion. The Examiner argues that each of these limitations would have been obvious to one having ordinary skill in the art based upon the apparatus disclosed in Bottomore in view of Obermeyer. Applicants respectfully traverse this rejection.

Claims 2, 9, 11, 12 and 18-20 are dependant upon claims 1, 5 or 17, respectively. Based upon the above-outlined arguments directed to claims 1, 5 and 17, Applicants respectfully submit that claims 1, 5 and 17 are patentable over any combination of Bottomore in view of Obermeyer and the Examiner has agreed during the telephone interview that these claims are patentable over the Bottomore in view of Obermeyer rejection. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 2, 9, 11, 12 and 18-20 based upon their dependence upon claims 1, 5 and 20 for the above-outlined reasons.



The Examiner rejected claims 15 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Bottomore in view of Obermeyer and further in view of U.S. Patent No. 4,189,878 (Fitzgerald). The Examiner argues that Bottomore in view of Obermeyer discloses each and every limitation of claims 15 and 16 except for a stiffener disposed along at least one of the first end and the two side edges. The Examiner further argues that Fitzgerald discloses the presence of a stiffener and one having ordinary skill in the art would find it obvious to modify the system of Bottomore in view of Obermeyer to include the stiffener of Fitzgerald for the purpose of increased support. Applicants respectfully traverse this rejection.

Referring to Figs. 1-4, Fitzgerald discloses an insulation vent 32 that is mounted between adjacent rafters 24 of a housing structure 10. The roof insulation vent 32 includes a roof clearing sheet 34 with a contact sheet 36 connected to one end by a crease line 46 and a stiffener tab 38 connected to an opposite end by a crease line 48. Spacer flanges 40 are attached to the roof clearing sheet 34 by flange crease lines 50 and stiffener tab positioning flanges 44 are attached to the stiffener tab 38 by stiffener tab flange creases 54. Contact sheet positioning flanges 42 are secured to the contact sheet 36 by positioning flange creases 52. In use, the contact sheet positioning flanges 42, spacer flanges 40 and stiffener tab positioning flanges 44 are bent upwardly and the contact sheet 36 and the stiffener tab 38 are bent downwardly relative to the roof clearing sheet 34. The edges of the spacer flanges 40 are positioned adjacent the bottom of the roof, the contact sheet positioning flanges 42 and stiffener tab positioning flanges 44. The insulation vent 32 is exclusively secured in the building by nailing the positioning flanges 42, 44 to the rafters 24.

Claims 15 and 16 are dependent upon claim 5. Applicants respectfully submit that a combination of Bottomore in view of Obermeyer and further in view of Fitzgerald does not result in a vent baffle including each and every element of claim 5. Specifically, no combination of Bottomore in view Obermeyer and Fitzgerald by one having ordinary skill in the art would result in a portion of the tail portion of the vent baffle being adapted to fixedly attach to an interior side of the wall plate of the building structure. As was described above, the corrugated tail portion of the ventilator described in Bottomore is not adapted to be secured to any portion of the building structure and is not appropriate for attachment to the wall plate, because such a modification to Bottomore would render the Bottomore ventilator unreasonably complicated. In addition, as was described above, one having ordinary skill in the art would not modify

Bottomore in view of Obermeyer to include a portion for attachment to an interior side of the building wall plate. Applicants further submit that the insulation vent described in Fitzgerald is exclusively adapted to be secured to roof rafters of the building, not any portion of the wall plate. To adapt Bottomore and Obermeyer in view of Fitzgerald as suggested by the Examiner would be contrary to Bottomore, as was described in detail above. Accordingly, Applicants respectfully submit that the inclusion of Fitzgerald into the combination of Bottomore in view of Obermeyer would not result in a vent baffle including a tail portion that is adapted to be fixedly attached to an interior side of the wall plate as is claimed in claim 5. Based upon each of the above-listed arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 15 and 16 based at least upon their dependence upon amended claim 5.

**CONCLUSION**

In view of the foregoing Amendment and remarks, Applicants respectfully submit that the present application, including claims 1-20, is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

**Palle Rye et al.**

January 10, 2006  
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Enclosures [Request for Continued Examination]

Attachments [Replacement Fig. 1]

**DRAWING AMENDMENTS**

Please replace Fig. 1 with attached replacement Fig. 1. Replacement Fig. 1 shows a flange 156 of a tail portion 150 of a vent baffle 100 mounted to an interior side 28a of a wall plate 28 of a building structure 10.